

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sebastian Torero	Team: Squad #1	CCRB Case #: 201907446	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 03/08/2019 5:45 PM	Location of Incident: § 87(2)(b)	Precinct: 66	18 Mo. SOL 9/8/2020	EO SOL 4/25/2021	
Date/Time CV Reported Wed, 08/21/2019 3:37 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/21/2019 3:37 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Brucato	08765	960287	062 PCT
2. POM Jelinson Martinez	00301	955135	062 PCT
3. SGT Frank Cinolauro	00937	940008	INT CIS

Officer(s)	Allegation	Investigator Recommendation
A.SGT Frank Cinolauro	Abuse: Sergeant Frank Cinolauro questioned § 87(2)(b)	§ 87(2)(b)
B.POM Jelinson Martinez	Abuse: Police Officer Jelinson Martinez threatened to arrest § 87(2)(b)	§ 87(2)(b)
C.POM Anthony Brucato	Abuse: Police Officer Anthony Brucato searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)

### Case Summary

§ 87(2)(b) filed this complaint with the CCRB on August 21, 2019.

On March 8, 2019, at approximately 5:45 PM, § 87(2)(b) double parked his vehicle in front of a fire hydrant on 20<sup>th</sup> Avenue in Brooklyn and went into his tattoo shop. Sergeant Frank Cinolauro of the Criminal Intelligence Section of the Intelligence Bureau, and Police Officer Jelinson Martinez and Police Officer Anthony Brucato of the 62<sup>nd</sup> Precinct went into the tattoo shop and approached § 87(2)(b) in the entryway as Sgt. Cinolauro asked for his identification (**Allegation A: Abuse of Authority**, § 87(2)(g)). Officers asked § 87(2)(b) to step outside; § 87(2)(b) refused, and PO Martinez told § 87(2)(b) to cooperate because he could be arrested for refusing to provide his identification (**Allegation B: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) exited his tattoo shop and provided his identification. Officers eventually placed § 87(2)(b) under arrest. As § 87(2)(b) was being led to the police vehicle, PO Brucato entered § 87(2)(b)'s car and searched it, including opening and searching the center console (**Allegation C: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was released with a Desk Appearance Ticket for § 87(2)(b).

The investigation obtained cell phone footage recorded by a witness, § 87(2)(b) security camera footage from a nearby store; and body-worn camera footage from Sgt. Cinolauro (Board Review 01-03).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant Frank Cinolauro questioned** § 87(2)(b)  
**Allegation (B) Abuse of Authority: Police Officer Jelinson Martinez threatened to arrest** § 87(2)(b)

It is undisputed that § 87(2)(b) parked his vehicle in front of a fire hydrant in such a manner that it was blocking traffic before exiting the car and going into his tattoo shop. It is undisputed that § 87(2)(b) refused to provide his identification to officers when initially asked. § 87(2)(g)

§ 87(2)(b) testified that he refused to give officers his identification when requested in the tattoo shop. Sgt. Cinolauro said, “I can’t even talk to this guy,” left the shop, and asked § 87(2)(b) to come outside. PO Martinez told § 87(2)(b) to comply and added, “Just do it, he could arrest you just for not showing him your ID.” § 87(2)(b) testified he then exited the tattoo shop and gave his driver’s license to Sgt. Cinolauro (Board Review 04).

PO Martinez did not recall telling § 87(2)(b) that he could be arrested for failing to provide his identification but testified that he probably did so. PO Martinez stated that by failing to show his identification § 87(2)(b) was interfering with an investigation that officers were conducting, and this interference was grounds for being placed under arrest (Board Review 05).

Sgt. Cinolauro’s body-worn camera shows that Sgt. Cinolauro asked § 87(2)(b) for his identification six times in the vestibule of the tattoo shop before § 87(2)(b) complied. The video does not capture PO Martinez threatening to arrest § 87(2)(b). However, from 4:49 to 5:00 in the video player’s timestamp, the video corroborates § 87(2)(b)’s testimony, in that Sgt. Cinolauro says, “I can’t even talk to this guy,” and exits the tattoo shop, leaving PO Martinez and § 87(2)(b) alone in the vestibule where they talk, though they cannot be clearly heard (Board Review 03).

New York State Vehicle and Traffic Law § 1202, section b, subsection 1, states that no person shall stop,

stand or park a vehicle within fifteen feet of a fire hydrant except when such a vehicle is attended by a licensed operator or chauffeur who is seated in the front seat and who can immediately move such a vehicle in case of emergency (Board Review 06). NYPD Patrol Guide Procedure 209-09 states that officers should conduct a license and warrant check when issuing a summons for a traffic violation, and officers may remove the person to whom they are issuing the summons to the command “if doubt concerning identity exists” (Board Review 07).

§ 87(2)(g)

**Allegation C: Abuse of Authority—Police Officer Anthony Brucato searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that PO Brucato searched § 87(2)(b)'s vehicle. It is undisputed that § 87(2)(b) had a billy club in his vehicle. § 87(2)(g)

§ 87(2)(b) testified that after he exited the tattoo shop, he stood with PO Martinez near the back of his car while Sgt. Cinolauro and PO Brucato stood near the front of the car and spoke to each other.

§ 87(2)(b) had several plaques on his dashboard, and an officer asked where § 87(2)(b)

§ 87(2)(b) had obtained a plaque from the Universal Life Church. § 87(2)(b) told officers it was from the Internet, and after this PO Martinez placed § 87(2)(b) in handcuffs and walked him to the police vehicle. After he was released, § 87(2)(b) saw a video that § 87(2)(b) recorded on his cell phone of PO Brucato searching § 87(2)(b)'s car. § 87(2)(b) did not see this happen during the incident, as he was being led to the police vehicle and his back was to his car. § 87(2)(b) testified he had a 19-inch long Tire Thumper Billy Club in the trunk of his vehicle (Board Review 04).

§ 87(2)(b) testified that he saw PO Brucato go through § 87(2)(b)'s center console (Board Review 08). The video shows that PO Brucato crossed the plane of the vehicle through the doorway at the driver's seat but does not clearly show him opening the center console (Board Review 01). No other video obtained by the investigation shows PO Brucato opening the center console. No civilian or officer testified that any officer opened § 87(2)(b)'s trunk on scene, and no video captures any officer opening or searching the trunk of § 87(2)(b)'s car.

Sgt. Cinolauro noted in his memo book that he observed a billy club in plain view in § 87(2)(b)'s vehicle; neither PO Martinez nor PO Brucato note the billy club in their memo book entries (Board Review 09-11). All three officers consistently testified that, upon approaching § 87(2)(b)'s vehicle, prior to any interaction with § 87(2)(b) they observed a billy club on the floor by the backseat of the car (Board Review 05, 12-13). Sgt. Cinolauro testified that he did not tell the other officers about the club but went straight to § 87(2)(b) (Board Review 12). Similarly, PO Martinez testified that there was no discussion amongst officers about the billy club (Board Review 05). PO Brucato did not recall if he said anything to his partners about the billy club but testified that he was sure he did so; he did not recall if his partners said anything to him about the club (Board Review 13). Security camera footage from a nearby shop shows that officers looked in the windows of § 87(2)(b)'s vehicle before entering the tattoo shop (Board Review 02).

PO Brucato testified that he searched around and under the driver's seat of § 87(2)(b)'s vehicle, and on the backseat and floor by the backseat because that is where he observed the billy club. He did not

recall what § 87(2)(b) s center console looked like or if he searched the center console but testified that he considered it to be within the “lungable, grabbable area” that was the parameter of his search. PO Brucato testified that he believed he searched § 87(2)(b) s vehicle at the stationhouse and recovered the billy club (Board Review 13). PO Martinez testified that he removed the billy club from the vehicle and vouchered it after he and PO Brucato searched the vehicle in the stationhouse; the property voucher for the billy club states that PO Martinez was the invoicing officer (Board Review 05, 14).

People v. Springer, 118 A.D.2d 606 (1986), found that officers who observed a gun in a vehicle occupant’s waistband and other weapons in plain view inside the vehicle had probable cause to arrest the occupant and search the vehicle (Board Review 15). New York State Penal Law §265.01, section 1, states that a person is guilty of criminal possession of a weapon in the fourth degree if he or she possesses a billy (Board Review 16).

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has been party to two CCRB complaints and has been named a victim in 10 allegations
  - § 87(2)(g)
- Sgt. Frank Cinolauro has been a member-of-service for 14 years and has been a subject in six CCRB complaints and eight allegations, none of which were substantiated.
- PO Anthony Brucato has been a member-of-service for four years and has been a subject in three CCRB complaints and five allegations, none of which were substantiated.
- PO Jelinson Martinez has been a member-of service for six years and has been a subject in three CCRB complaints and three allegations, none of which were substantiated.

#### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of December 4, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 19).

Squad No.: 1

Investigator:

Signature

Inv. Sebastian Torero

Print Title & Name

Date

Squad Leader: \_\_\_\_\_  
Signature                      Print Title & Name                      Date